TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 257. 26

ELBRIDGE TUFTS, APPELLANT,

vs.

DON C. TUFTS, ADMINISTRATOR OF THE ESTATE OF ELMIRA P. TUFTS, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED JUNE 18, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

a *Transcript on Appeal.*

In the Supreme Court, Utah Territory. January Term, 1884.

ELMIRA P. TUFTS, Appellee, *vs.* ELBRIDGE TUFTS, Appellant.

Sheeks & Rawlins, Dickson & Varian, attorneys for appellant; Arthur Brown, attorney for appellee.

Filed January 10, 1884.

E. T. SPRAGUE,
Clerk of Sup. Court.

1 *Complaint.*

In the District Court of the Third Judicial District of the Territory of Utah.

TERRITORY OF UTAH, }
County of Salt Lake, } *ss:*

ELMIRA P. TUFTS, Plaintiff, *vs.* ELBRIDGE TUFTS, Defendant.

Said plaintiff complains of said defendant in the above-entitled action, and alleges:

That she is seventy years of age; that she is now and has been for thirty-two years last past a widow.

That on and prior to the 26th day of June, A. D. 1882, plaintiff was in the lawful possession and was the owner of the following-described real estate lying, being, and situate in the city and county of Salt Lake, in the Territory of Utah, and more fully described as follows, to wit: Being [th]at part of lot five (5) in block fifty-three (53) of plat "A" of Salt Lake City survey, bounded and described as follows, to wit: Commencing at the northwest corner of said lot and running along the line of First East Temple street seven rods to a point; thence east at right angles seven rods to a point; thence north at a right angle seven rods to a point; thence west along the line of Third South Temple street seven rods to the place of beginning, containing an area of forty-nine square rods of ground. Plaintiff alleges that for five months last past the defendant has been

2 trying to induce the plaintiff to agree to convey and transfer to him all her right, title, and interest in and to said real estate for the consideration that said defendant would at the same time agree to convey to the plaintiff all his, said defendant's, right,, title, and interest in and to all his real estate of whatsoever kind, sort or description, situated and being in said city and county of Salt Lake, Territory of Utah, with the proviso in said agreement that whoever of said plaintiff or defendant died first the survivor should take possession of, have, own, and hold to their own use and benefit forever the whole of the real estate owned by both, and no title was to pass from either until his or her death, as the case might be, said defendant owning nine rods north front by ten rods east front, with the exception of three rods south front by three rods west front out of the southwest corner of said defendant's lot, the northwest corner of said Elbridge Tuft's lot being seven rods from the north-

west corner of the said land belonging to said plaintiff, and all being in said lot five, block fifty-three, plat "A" of Salk Lake City survey.

Plaintiff also alleges that said defendant, in order to induce her to sign such agreement, showed the plaintiff some papers which had been drawn between them, but never executed, some seventeen years ago, at a time when said defendant began to build his house on his said lot, and he was not expected to live, and being then intended to take the place of a will containing substantially the same provisions as above described; and defendant also promised the plaintiff in the month of June, 1882, if she would execute an agreement which he had then, on or about said June 26, 1882, drawn up and read to plaintiff, the same embodying substantially the same premises as hereinbefore set forth in said other agreement, that the defendant would build the plaintiff, at his own expense, a nice brick house upon his, said defendant's, lot of land, situated immediately east of and adjoining on to the eastern portion of the above-described lot of land, which was owned by the plaintiff, as aforesaid, and being a portion or part of said lot No. 5, in
3 N. W. corner thereof, and give her a life lease of the same to use for her own benefit, free from any and all expense to her during her natural life, said brick building to be commenced by defendant as soon as the plaintiff would sign said written agreement, then drawn up by defendant.

Plaintiff alleges that all said talk and actions of defendant was for the fraudulent design of procuring plaintiff's said real estate as his own property, and that he never intended to and never at any time did execute such an agreement, but did intend to obtain a warrantee deed and the possession of said plaintiff's real estate without giving her any consideration therefor. Plaintiff alleges that, relying upon the statements and arguments of said defendant, she signed and executed what she supposed to be said agreement as had been thereto fore, to wit, June 26th, 1882, drawn by defendant and read to h by said defendant as embodying their said intentions, but which s has since learned was a warrantee deed from said plaintiff to said c fendant conveying said real estate of plaintiff hereinbefore describ from said plaintiff to said defendant, a copy of which deed is here annexed and made a part hereof, marked Exhibit "A."

Plaintiff alleges that Nephi W. Clayton, the notary public before whom said deed was acknowledged, said to plaintiff in the presence and hearing of defendant, before she signed the same, that said deed should first be read over to her, whereupon said defendant replying that it was not necessary because he, defendant, had read the same over to her himself and that plaintiff understood the contents thereof, thereupon the plaintiff, believing and relying upon the false and fraudulent statements then made by defendant, and believing said paper which she was about to sign to be the agreement or will which had been theretofore read by her and written by defendant June 26th, 1882, then signed and executed said warrantee deed, a copy of which is marked Exhibit "A."

Plaintiff alleges that said defendant never paid any consideration

for said warrantee deed or the title which same conveyed to
4 her at any time, and that he obtained the same from her without her will, wish, or consent of any kind whatever, and after so fraudulently obtaining said deed to said real estate of said plaintiff the defendant, on July 10th, 1882, recorded the same in the office of the recorder for Salt Lake county.

Plaintiff alleges, on information and belief, that defendant, after so fraudulently obtaining the title to said plaintiff's real estate, ordered one of the plaintiff's tenants, to wit, one Frederick Jewitt, on or about July 15th, 1882, to pay the rent to him of one of the rooms of the building which is situate and being on said described lot of land belonging to plaintiff, falsely and fraudulently then claiming to said Jewett that he, defendant, was then the lawful and rightful owner of said premises, and ordered said Jewett not to pay the rent of said room to the plaintiff.

Plaintiff alleges she has, since discovering the fraud of said false deed, make demand upon said defendant to *recovery* to plaintiff her said land and premises herein described, and which were so fraudulently obtained by defendant as aforesaid, and defendant wholly refuses so to do.

Plaintiff alleges she did not know the contents of said warrantee deed when she signed and executed the same, and never knew she had executed such an instrument until said Frederick Jewett notified her that said defendant claimed to be the owner of her said property. Plaintiff alleges she is now and always has been the rightful and lawful owner of said real estate which was so fraudulently obtained by said defendant from said plaintiff.

Plaintiff alleges she believed at the time of executing said deed that she was signing the agreement hereinbefore recited, a more particular description of which the plaintiff is unable to give, never having had the same in her possession and her statements thereof being
driving from memory.
at Plaintiff alleges said defendant has not commenced to build the
Th ick house on his said lot as he had promised plaintiff to do, nor
co ven or executed any agreement giving the plaintiff a life lease on
any of his said land or on the property heretofore owned by
2 the plaintiff as aforesaid, but, on the contrary, said defendant claims to be the owner and to exercise acts of ownership of and over the plaintiff's said real estate, as fully described in said warrantee deed, a copy of which is marked Exhibit "A." Whereupon plaintiff prays judgment that the said warrantee deed from plaintiff to defendant dated June 26th, 1882, a copy of which is hereto annexed and marked Exhibit "A," be by the court decreed to be fraudulent, null, and void.

That the defendant, Elbridge Tufts, be required, by the decree of this court, within five days or such time as the court may appoint after such decree, to convey to said plaintiff all right, title, and interest he may have acquired in said real estate, and, in default thereof, a commissioner, or other person — be named by this court under the decree herein, be authorized and empowered by decree of this court

to execute and deliver to plaintiff such deed, and for such other relief as may be equitable and just, and for costs of suit.

CHAS. F. BLANDIN,
Attorney for Plaintiff.

TERRITORY OF UTAH, }
County of Salt Lake, } ss:

Elmira P. Tufts, first being duly sworn, upon her oath says: I am the plaintiff in the above-entitled action; I have heard read said complaint and know the contents thereof, and that the same is true of my own knowledge, except the matters therein set forth upon information and belief, and as to those matters I believe it to be true.

ELMIRA P. TUFTS.

Subscribed and sworn to before me this first day of August, 1882.

[SEAL.] CHAS. F. BLANDIN,
Notary Public.

EXHIBIT A.

This indenture, made the twenty-sixth day of June, in the
6 year of our Lord one thousand eight hundred and eighty-two, between Elmira P. Tufts, of Salt Lake City, in the county of Salt Lake and Territory of Utah, the party of the first part, and Elbridge Tufts, of the city, county, and Territory aforesaid, the party of the second part, witnesseth: That the said party of the first part, for and in consideration of three thousand dollars, lawful money of the United States of America, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and his heirs and assigns, forever, all that lot or parcel of land situate, lying, and being in the city and county of Salt Lake and Territory of Utah, and bounded and described as follows, to wit:

Commencing at the northwest corner of lot five (5), in block fifty-three (53), plat "A," of the Salt Lake City survey, and running south seven (7) rods; thence east seven (7) rods; thence north seven (7) rods; thence west seven (7) rods to the place of beginning, containing forty-nine (49) square rods of ground.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to said premises, and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns, forever, and the said party of the first part, and her heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part and her heirs, and against any and

all persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

7 In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

ELMIRA P. TUFTS. [SEAL.]

Signed, sealed, and delivered in the presence of—
EDWIN FROST.

UNITED STATES OF AMERICA.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

On this fifth day of July, A. D. one thousand eight hundred and eighty-two, before me, N. W. Clayton, a notary public in and for said county, Territory of Utah, duly commissioned and qualified, personally appeared Elmira P. Tufts, whose name is subscribed to the annexed instrument as a party thereto, and duly acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in Salt Lake City, U. T., the day and year in this certificate first above written.

[SEAL.] NEPHI W. CLAYTON,
Notary Public.

Recorded July 10, 1882, at 2.30 p. m.

TERRITORY OF UTAH, } ss:
Salt Lake County, }

I, Angus M. Cannon, recorder within and for said county, do hereby certify that the above and foregoing is a full, true, and correct copy of the above and foregoing instrument as appears of record in my office, in book "F" of Deeds and Transfers, pages 575 and 576.

This the first day of August, 1882.

[SEAL.] ANGUS M. CANNON,
Recorder of Salt Lake County,
By ISAAC M. WADDELL,
Deputy.

8 Endorsed: 5243. Title of court and cause. Complaint. Filed August 1st, 1882. O. J. Averill, clerk.

(Title of court and cause.)

The said defendant, for answer to plaintiff's complaint, denies that he at any time tried to induce plaintiff to agree to convey or to convey to him the title to the property in said complaint mentioned as having belonged to plaintiff in consideration that the defendant at the same or any time convey or agree to convey to plaintiff any

right or title or interest in or to any of his real estate whatsoever, or that he at any time tried to induce plaintiff to agree to convey her said estate or any interest therein to defendant with a proviso in such agreement that no title was to pass from her until her death.

Denies that in order to induce plaintiff to sign such an agreement as is by her mentioned in said complaint, or to induce her to sign any agreement whatever, he showed to her any paper or papers which had at any time been drawn between them, or any paper or papers whatever.

Denies that in order to induce plaintiff to sign an agreement of the kind mentioned in said complaint or any agreement whatever, or for any other purpose, or at all, he promised that he would build at his own expense for plaintiff a nice brick or any house on any of defendant's land or elsewhere, or that he would give her a life or any lease on any such house or any house.

Denies that said alleged representations, promises, inducements, agreements, or conduct, or any representations, promises, inducements, agreements, or conduct, of defendant was for the fraudulent or any design of procuring plaintiff's said or any real estate as his own property or otherwise, or for the purpose or with the intent to obtain a warrantee or any deed or possession of plaintiff's real estate without giving a consideration therefor or otherwise, without her full knowledge and consent.

9 Denies that plaintiff, relying upon any statements or agreements of the kind mentioned in said complaint, *plaintiff* signed any paper whatever for defendant, or that at the time she signed said deed she supposed or believed it to be an agreement of the kind mentioned in said complaint, or that she supposed or believed it to be any other or different kind of an instrument than it really was.

Denies that plaintiff did not know at the time she signed and executed said deed what the same was and the contents thereof, or that she believed she was signing any agreement or other instrument different from said deed, but, on the contrary, alleges that she had full knowledge of the nature, character, and contents thereof, and that she signed and executed the same well knowing what it was.

Denies that defendant never gave or paid plaintiff any consideration therefor, but alleges that said deed was executed for a good and valuable consideration.

Denies that plaintiff is now the rightful owner or the owner at all of the real estate described in her complaint or any part thereof.

Wherefore defendant asks judgment for costs.

SHEEKS & RAWLINS,
Attorneys for Defendant.

UTAH TERRITORY, }
Salt Lake County, } *ss:*

I, Elbridge Tufts, being first duly sworn, on my oath say that I have heard the foregoing answer read and know the contents thereof, and that the same is true of my own knowledge.

ELBRIDGE TUFTS.

Subscribed and sworn to before me this August 25th, 1882.

O. J. AVERILL, *Clerk*,
By H. G. McMILLAN,
Deputy Clerk.

10 Filed Sept. 1st, 1882.

O. J. AVERILL, *Clerk*,
By H. G. McMILLAN,
Deputy Clerk.

I hereby accept service of within answer.

CHAS. F. BLANDIN.
Per PAMELIA A. KEMPTON.

(Title of court and cause.)

This cause having heretofore, on the 14th day of March, 1883, — submitted to the court for decision upon the complaint of the plaintiff and the answer of the defendant, and the court having heard the proofs of the respective parties and arguments of counsel upon the same, and considered the said proofs, papers, and records in the case, and the arguments aforesaid, and the question having been submitted to the court for its decision, the court now makes the following findings of fact and conclusions of law, to wit:

Findings of Fact.

That on the 5th day of July, 1882, and for a long time prior thereto, the plaintiff had been the owner in fee-simple and in the possession and entitled to the possession of the following-described tract of land as set forth in the complaint, to wit: Being a part of lot five (5), in block fifty-three (53), of plat "A," of Salt Lake City survey, bounded and described as follows: Commencing at the northwest corner of said lot five (5) and running south seven (7) rods; thence east seven (7) rods; thence north seven (7) rods; thence west seven (7) rods to the place of beginning, containing forty-nine (49) square rods of ground.

Second.

That at the date aforesaid — sustained towards the plaintiff the relation of son to mother; that the plaintiff was seventy years
11 of age; that the plaintiff reposed great confidence and trust in the defendant, who had been heretofore attending to business for her, and in former years they had lived together, even after the defendant became of age.

Third.

That on the said 5th day of July, 1882, the defendant procured from the plaintiff an absolute deed of said described tract of land, which deed was afterwards, on the 10th day of July, 1882, recorded in the office of the county recorder of Salt Lake county, Utah, in book "F" of deeds and transfers, pages 575 and 576.

Fourth.

That at the time of the execution of said deed plaintiff did not know that it was a deed of her property in question, but believed it to be a life lease of property belonging to the defendant, upon which she was agreeing to assist in building a house; that prior to the time of the execution of said deed there had been negotiations between the said plaintiff and the said defendant to the effect that the plaintiff should assist defendant with money to build a house upon lands of his own, and that the plaintiff should have a life lease of the same; that after such negotiations had taken place she directed defendant to prepare the proper papers; that defendant, instead of preparing the papers directed by plaintiff, prepared a warrantee deed of the land in question, and procured the signature of the plaintiff thereto; that the same was not read to the plaintiff, and she did not know the contents thereof; that there was no consideration for the same passed between the parties, and that the plaintiff signed the same under the belief that it was a paper relative to a life lease to her of the said land of the defendant upon which said building was to be erected; that the signature of the plaintiff to the said deed was procured by the fraud of the defendant; that the defendant never has attempted to build any such house as was contemplated by the agreement for the life lease.

12 Fifth.

That the plaintiff, since the execution of the said deed, has remained in the possession and control of the property in question; that prior to the commencement of this suit the plaintiff caused demand to be made upon the defendant that he reconvey the property to her.

Conclusions of Law.

I find as conclusion of law that said deed set forth in the complaint from the plaintiff to the defendant for the land aforesaid was procured by fraud, and that the same should be cancelled and set aside; that the plaintiff is entitled to the possession of and title to the said land and premises; that the plaintiff is entitled to a decree that the said defendant do, within five days after demand upon him, execute and deliver to the plaintiff a deed, duly acknowledged, of the aforesaid premises; that in case of his failure so to do such order and decree shall stand as a cancellation of the said deed from the plaintiff to the defendant that the same is cancelled, set aside, and declared null and void; that the plaintiff is entitled to recover of the defendant her costs in this behalf expended, and judgment is hereby ordered to be entered accordingly.

Dated March 15, 1883.

By the court:

JOHN A. HUNTER, *Judge.*

Findings. Filed March 15, 1883.

O. J. AVERILL, *Clerk,*
By H. G. McMILLAN,
Deputy Clerk.

13 (Title of court and cause.)

This cause having been brought on to be heard on the 14th day of March, 1883, on the complaint of the plaintiff and the answer of the defendant, and the proofs having been taken in open court and duly considered by the court, and the court having signed and filed its written findings of fact and conclusions of law in said cause, it is now ordered, adjudged, and decreed that the deed described in the complaint from Elmira P. Tufts to Elbridge Tufts of the following property, to wit, a part of lot five (5), in block fifty-three (53), of plat A, of the Salt Lake City survey, in the city and county of Salt Lake, Territory of Utah, bounded and described as follows: Commencing at the northwest corner of said lot five (5), and running south seven (7) rods; thence east (7) rods; thence north seven (7) rods; thence west seven (7) rods, containing forty-nine (49) square rods of ground, be, and the same is hereby, declared null and void, and the said defendant, Elbridge Tufts, has no title by virtue of such deed, or any one claiming by, through, or under him.

That the defendant, Elbridge Tufts, be required, within five days after demand upon him, to execute and deliver to the plaintiff a deed, duly acknowledged, of the aforesaid premises; that in case of his failure so to do this decree shall stand as a cancellation of said deed from the plaintiff to the defendant, and the same is hereby cancelled, set aside, and declared null and void; that the plaintiff is entitled to her costs, taxed at the sum of $38.60.

Dated March 15th, 1883.

By the court: JOHN A. HUNTER, *Judge.*

Decree. Filed March 15th, 1883.

O. J. AVERILL, *Clerk,*
By H. G. McMILLAN,
Deputy Clerk.

14 ELMIRA P. TUFTS *vs.* ELBRIDGE TUFTS.

The death of the plaintiff, Elmira P. Tufts, is suggested, and by consent of counsel, it is ordered that Don C. Tufts, administrator, be, and is hereby, substituted as plaintiff herein, and the case revived in that name, and the motion of defendant for a new trial, coming on to be heard, the same is argued by Dickson & Varian for the defendant, and by J. L. Rawlins and Arthur Brown; and being submitted, is taken under advisement.

Oct. 1st, 1883.

JOHN A. HUNTER, *Judge.*

15 (Title of court and cause.)

Notice is hereby given that the defendant above named hereby appeals to the supreme court of the Territory of Utah from the judgment and decree made and entered in the above-entitled action in the third judicial district court of the Territory of Utah for Salt Lake county, on the 17th day of April, A. D. 1883, and from the

whole thereof, and from the order of said court overruling defendant's motion for a new trial in said action.

SHEEKS & RAWLINS,
DICKSON & VARIAN,
Attorneys for Defendant.

To the clerk of said court and Charles F. Blandin and Arthur Brown, Esquires, attorneys for plaintiff.

Endorsed: Title of court and cause. Notice of appeal. Filed November 24th, 1883. O. J. Averill, clerk, by H. G. McMillan, deputy clerk.

Service of copy after filing admitted November 24th, 1883.
ARTHUR BROWN,
Plaintiff's Attorney.

16 (Title of court and cause.)

Whereas the defendant above named is about to appeal to the supreme court of the Territory of Utah from the judgment and decree made and entered against him in the above-entitled action and from the order overruling his motion for a new trial therein:

Now, therefore, in consideration of the premises we, the undersigned, all of Salt Lake City and county, in the Territory of Utah, do jointly and severally undertake and promise on the part of the appellant that the said appellant will pay to the plaintiff all costs and damages which may be awarded against him on the appeal, not exceeding the sum of three hundred dollars, lawful money of the United States of America, in which sum we acknowledge ourselves to be jointly and severally bound.

M. GOLDSTICKER. [SEAL.]
HENRY DENHALTER. [SEAL.]
ELBRIDGE TUFTS. [SEAL.]

Witnessed by—
WM. FULLER.
S. W. DARKE.

UTAH TERRITORY, *Salt Lake County,* } *ss:*

M. Goldsticker and Henry Denhalter, the sureties in the foregoing undertaking, being first duly sworn, each for himself and not one for the other, deposes and says that he is worth the amount in said undertaking specified, over and above all of his just debts and liabilities, exclusive of property exempt from execution.

M. GOLDSTICKER.
HENRY DENHALTER.

Subscribed and sworn to before me this 24th day of November, 1883.

[SEAL.]

WILLIAM FULLER,
Notary Public.

17 Endorsed: Undertaking on appeal. Filed November 24th, 1883. O. J. Averill, clerk, by H. G. McMillan, deputy clerk.

I, O. J. Averill, clerk of the third judicial district court of Utah Territory, do hereby certify that the following is a full, true, and correct copy of the original complaint, answer, findings, and conclusions of law and decree of court, motion for new trial, order making Don C. Tufts, administrator, plaintiff, and substituting motion for new trial, order overruling motion for new trial, notice of appeal, and undertaking on appeal in the above-entitled action filed in my office.

Witness my hand and the seal of said court, at Salt Lake City, this 19th day of December, A. D. 1883.

[SEAL.] O. J. AVERILL, *Clerk*,
By H. G. McMILLAN,
Deputy Clerk.

18 THURSDAY, *January 24th, A. D.* 1884.

A session of the supreme court of Utah Territory was held this day, beginning at 10 o'clock a. m., pursuant to adjournment.

Present: All the justices, the clerk, marshal, and members of the bar.

Court was duly opened, and the record of the last session read and signed.

* * * * * * *

DON C. TUFTS, Adm'r, &c., Respondent,
vs.
ELBRIDGE TUFTS, Appellant. } From 3d Dist.

This cause, coming on regularly for hearing, was argued by Mr. Dickson for appellant.

FRIDAY, *January 25th, A. D.* 1884.

* * * * * * *

DON C. TUFTS, Adm'r, &c., Respondent,
vs.
ELBRIDGE TUFTS, Appellant. } From 3d Dist.

This cause was further argued by Mr. Brown for respondent, and Mr. Rawlins for appellant, submitted, and taken under advisement.

19 FRIDAY, *February 1st, A. D.* 1884.

A session of the supreme court of Utah Territory was held this day, beginning at 10 o'clock a. m., pursuant to adjournment.

Present and presiding: Hon. John A. Hunter, chief justice; present also, Hon. P. H. Emerson, associate justice, and Hon. S. P.

Lewis, associate justice; the clerk, marshal, and members of the bar.

Court was duly opened.

* * * * * * *

DON C. TUFTS, Adm'r, &c., Respondent,
vs.
ELBRIDGE TUFTS, Appellant. } From 3d Dist.

This cause having been heretofore argued and submitted and the court being sufficiently advised thereupon, it is now here considered, ordered, and adjudged that the judgement of the district court therein be, and it is hereby, affirmed; and, further, that respondent have and recover of and from appellant the sum of thirty-one dollars costs.

20 WEDNESDAY, *June 4th, A. D.* 1884.

A session of the supreme court of Utah Territory was held this day, beginning at 10 o'clock a. m., pursuant to adjournment.

Present: All the justices, the clerk, marshal, and members of the bar.

Court was duly opened.

* * * * * * *

DON C. TUFTS, Adm'r, &c., Respondent,
vs.
ELBRIDGE TUFTS, Appellant. } From 3d Dist.

In this cause counsel of appellant ask the allowance of an appeal from the judgement of this court heretofore entered therein to the Supreme Court of the United States, and that the amount of a bond to be given thereon be now fixed; whereupon it is ordered that said appeal be, and it is hereby, allowed, and the amount of a bond to be given thereon be and is fixed at $250.00.

21 The United States of America to Don. C. Tufts, administrator of the estate of Elmira P. Tufts, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to and to answer an appeal in a suit in which Elbridge Tufts is appellant and you are appellee, to show cause, if any there be, why a judgment of the supreme court of Utah Territory rendered against said appellant in in said appeal should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John A. Hunter, chief justice of the supreme court of Utah Territory, this 4th day of June, A. D. 1884.

JOHN A. HUNTER,
Chief Justice of Utah.

TERRITORY OF UTAH, } ss:
Salt Lake County, }

On this 4th day of June, A. D. 1884, personally appeared J. H. Hurd before me, the subscriber, and makes oath that he de-
21½ livered a true copy of the within citation to Don. C. Tufts, adm'r, etc., personally on the 4th day of June, A. D. 1884.

JOS. H. HURD.

Sworn to and subscribed before me the day and year last aforesaid.

JOHN A. HUNTER,
Chief Justice of Utah.

(Endorsed:) Elbridge Tufts, appellant, *vs.* Don. C. Tufts, adm'r, etc., appelle-. Citation. Filed June 5th, 1884. E. T. Sprague, clerk. Sheeks & Rawlins and Dickson & Varian, att'ys for appellant.

22 DON C. TUFTS, Administrator of the Estate of Elmira P. Tufts, Deceased, Respondent,

vs.

ELBRIDGE TUFTS, Appellant.

This is a suit to annul and set aside a warrantee deed made by Elmira P. Tufts to the defendant, Elbridge Tufts, on the 26th day of June, 1882, of certain property therein described, situated in Salt Lake City, known as the Colorado House. Since the trial in the district court Elmira P. Tufts, the original plaintiff, has died, and the present plaintiff, Don C. Tufts, has been appointed administrator of her estate, and has duly qualified as such.

The complaint contains allegations to the effect that the defendant had proposed to the deceased plaintiff that they would mutually enter into an agreement that she should thereby convey to the defendant the property in controversy, and that he should convey to her all of his real estate in Salt Lake City, with the proviso in said agreement that whosoever of said plaintiff or defendant dies
23 first the survivor should take possession of, have, own, and hold, to their own use and benefit, forever, the whole real estate owned by both, and no title was to pass from either until his or her death, as the case might be; that the defendant, in the month of June, 1882, further promised the deceased that if she would execute an agreement, which he then had and read to her, in effect similar to the proposed agreement above described, that he would build for the plaintiff, at his own expense, a nice brick house upon a lot of land belonging to him and adjoining the lot described or conveyed in said deed and give her a life lease of the same, "to use for her own benefit," free from any and all expenses to her during her natural life, the said brick building to be commenced by defendant as soon as the plaintiff would sign said written agreement at the time drawn up by him.

"Plaintiff further alleges that all said talk and action of defendant

was for the fraudulent design of procuring plaintiff's said real estate as his own property, and that he never intended to, and never
24 at any time did, execute such an agreement, but did intend to obtain a warrantee deed and the possession of said plaintiff's real estate, without giving her any consideration therefor. Plaintiff alleges that, relying upon the statements and agreements of said defendant, she signed and executed what she supposed to be said agreement, as had been theretofore, to wit, June 26th, 1882, drawn by defendant and read to her by said defendant as embodying their said intentions, but which she has since learned was a warrantee deed from said palintiff to said defendant conveying said real estate hereinbefore described from said plaintiff to said defendant," and that plaintiff, believing and relying upon the false and fraudulent statements there made by defendant, and believing said paper which she was about to sign to be the agreement or will which had been theretofore read by her and written by defendant June 26th, 1882, then signed and executed said warrantee deed.

That defendant never paid any consideration for said warrantee deed; that he obtained the same from her without her will
25 or consent of any kind whatever, and caused the same to be recorded in the office of the recorder of Salt Lake county.

That since discovering the fraud of said false deed she has made demand upon said defendant to reconvey to plaintiff her said land and premises, which defendant refused to do; that the deceased was at the commencement of this suit, and always had been, the lawful owner of said real estate; that defendant has not commenced to build the brick house on his said lot, as he had promised plaintiff to do, nor given or executed any agreement giving the plaintiff a life lease on any of his land or on the property heretofore owned by the plaintiff as aforesaid, and prays judgment that the said warrantee deed from plaintiff to defendant be decreed to be fraudulent, null, and void, and that the defendant be required by the decree of this court to convey to said plaintiff all right, title, and interest he may have acquired in said real estate, and for costs of suit.

The answer denies every material allegation contained in
26 the complaint. Upon the trial before the court, without a jury, there were some six or seven witnesses upon one side and the other, besides the deceased plaintiff and the defendant.

The findings of fact and conclusions of law by the court are as follows:

1st. That on the 5th day of July, 1882, and for a long time prior thereto, the plaintiff had been the owner in fee-simple and in possession and entitled to the possession of the following-described tract of land as set forth in the complaint, to wit: Being a part of lot five (5) in block fifty-three (53) of plat "A," of Salt Lake City survey, bounded and described as follows: Commencing at the northwest corner of said lot five (5) and running south seven (7) rods; thence west [seven] (7) rods to the place of beginning, containing forty-nine (49) square rods of ground.

2d. That at the date aforesaid the defendant sustained towards the plaintiff the relation of son to mother; that the plaintiff was seventy

years of age; that the plaintiff reposed great confidence and
27 trust in the defendant, who had been theretofore attending to business for her, and in former years they had lived together even after the defendant became of age.

3d. That on the said 5th day of July, 1882, the defendant procured from the plaintiff an absolute deed of said described tract of land, which deed was afterwards on the 10th day of July, 1882, recorded in the office of the county recorder of Salt Lake county, Utah, in book "F" of Deeds and Transfers, pages 575 and 576.

4th. That at the time of the execution of said deed plaintiff did not know that it was a deed of her property in question, but believed it to be a life lease of property belonging to the defendant, upon which she was agreeing to assist in building a house; that prior to the time of the execution of said deed there had been negociations between the said plaintiff and the said defendant to the effect that the plaintiff should assist defendant with money to build a house upon lands of his own, and that after such negociations had taken place she directed the defendant to prepare the proper papers; that defendant, instead of preparing the papers directed by plain-
28 tiff, prepared a warrantee deed of the land in question, and procured the signature of the plaintiff thereto; that the same was not read to the plaintiff and she did not know the contents thereof; that there was no consideration for the same passed between the parties, and that the plaintiff signed the same under the belief that it was a paper relative to a life lease to her of the said land of the defendant, upon which said building was to be erected; that the signature of the plaintiff to the said deed was procured by the fraud of the defendant; that the defendant never has attempted to build any such house as was contemplated by the agreement for the life lease.

5th. That the plaintiff, since the execution of the said deed, has remained in the possession and control of the property in question; that prior to the commencement of this suit the plaintiff caused demand to be made upon the defendant that he reconvey the property to her.

Conclusions of Law.

I find as conclusions of law that said deed set forth in the
29 complaint from the plaintiff to the defendant for the land aforesaid was procured by fraud, and that the same should be cancelled and set aside; that the plaintiff is entitled to the possession of and title to the said land and premises; that the plaintiff is entitled to a decree that the said defendant do, within five days after demand upon him, execute and deliver to the plaintiff a deed duly acknowledged of the aforesaid premises; that in case of his failure so to do such order and decree shall stand as a cancellation of the said deed from the plaintiff to the defendant; that the same is cancelled, set aside, and declared null and void; that the plaintiff is entitled to recover of the defendant her costs in this behalf expended, and judgment is hereby ordered accordingly.

The law presumes that every person who puts his name to and

executes a deed knows the contents of the instrument to which he puts his seal and before some magistrate acknowledges with
30 solemnity the instrument as his act and deed, and that he knows the legal effect of it. But in a case where it is charged that a deed is executed by reason of false and fraudulent representations as to its contents and that it was falsely read to him, and that by reason of such representations and reading he executed it in ignorance of its contents, then the validity of such deed may be inquired into and impeached by oral testimony; and if it is sufficient in strength to carry conviction to the mind of the jury or of the court sitting as jury of the truth of the charge, the effect may be that the solemn deed to the party be annulled and held for naught.

Eaton *vs.* Eaton, N. J. L., 108.

This principle of law is universally recognized, and is necessary to protect the unwary, weak, or ignorant from the cupidity of the unscrupulous sharper, whose efforts to enrich himself at the loss or ruin of others is restrained only by want of opportunity and a wholesome sence of the power or efficacy of the law to protect and
31 avenge the injured, redress his wrongs, and punish the guilty.

We are all of the opinion that the court below could upon the testimony before it find for the plaintiff upon all of the issues, and that the record shows no error, and therefore the judgment of the district court is affirmed.

STEPHEN P. TWISS,
Associate Justice.

Hunter, C. J., and Emerson, A. J., concur.

Filed February 28, 1884.

E. T. SPRAGUE, *Clerk.*

32 Know all men by these presents, that we, Jacob Moritz, of Salt Lake City, Utah Territory, and Peter T. Nystrom, of Salt Lake City, Utah Territory, are held and firmly bound unto Don C. Tufts, adm'r, &c., in the full and just sum of two hundred and fifty dollars, to be paid to the said Don C. Tufts, his certain attorney, executors, administrators, heirs, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at a term of the supreme court of Utah Territory, on the — day of ——, A. D. 1884, in a suit depending between Elbridge Tufts, appellant, and Don C. Tufts, respondent, judgement was rendered against the said appellant and in favor of the said respondent, and the said appellant having obtained the allowance of an appeal from said supreme court of Utah Territory to the
33 Supreme Court of the United States to reverse the said judgement in the aforesaid suit, and a citation directed to the said Don C. Tufts citing and and admonishing him to be and appear at

a Supreme court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of this obligation is such that if the said Elbridge Tufts shall prosecute the said appeal to effect and answer all damages and costs if he fail to make his said plea good, then the above obligation to be void; else to remain in full force and virtue.

JACOB MORITZ. [SEAL.]
PETER T. NYSTROM. [SEAL.]

Sealed and delivered in presence of —
WILLIAM FULLER.
S. W. DARKE.

Approved by—
JOHN A. HUNTER,
Chief Justice Supreme Court of Utah.

TERRITORY OF UTAH, } ss:
County of Salt Lake, }

Jacob Moritz and Peter T. Nystrom, whose names are sub-
34 scribed as sureties to the within undertaking, being each duly severally sworn, each for himself says that he is a resident of said county of Salt Lake, in the Territory of Utah; that he is worth the amount specified in said undertaking as the penalty thereof over and above all his debts and liabilities, exclusive of property exempt from execution.

JACOB MORITZ.
PETER T. NYSTROM.

Subscribed and sworn to before me this fourth day of June, 1884.

[SEAL.] WILLIAM FULLER,
Notary Public.

Tufts *vs.* Tufts. Undertaking on appeal to U. S. Sup. Court. Filed June 5th, 1884. E. T. Sprague, clerk.

35 In the Supreme Court of the United States.

ELBRIDGE TUFTS, Appellant,
vs.
DON C. TUFTS, Administrator, &c., of the Estate of Elmira P. Tufts, Deceased, Appellee.

On this 4th day of June, 1884, personally appeared before me the undersigned, well known to me to be the persons — representing themselves to be, who, being first duly sworn, on their oaths do say that they are doing business as real estate agents in Salt Lake City, Utah Territory, and are well acquainted with the following-described real estate, to wit: Seven (7) rods square, being the northwest corner of lot five (5), block fifty-three (53), plat "A," Salt Lake City survey

and that said property is of the value of five thousand dollars ($5,000.00.)

WILLIAM FULLER.
S. W. DARKE.

Sworn to and subscribed before me this 4th day of June, 1884.

[SEAL.] JOS. F. SIMMONS,
Notary Public, Salt Lake Co., U. T.

36 TERRITORY OF UTAH, } ss:
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of said Territory, in pursuance of an appeal of the cause of Don C. Tufts, adm'r, &c., *vs.* Elbridge Tufts, return attached hereto the original citation, a transcript of the record and proceedings, of the opinion, the affidavit of value, and of the undertaking on appeal, all in and of said court and cause, to the Supreme Court of the United States, and I hereby certify that said transcript of the record, proceedings, opinion, affidavit, and undertaking is a true, full, correct, and completed copy of the several originals thereof on file or of record in my office, excepting only that the motion for new trial and the statement and order thereon are omitted from said record.

In testimony whereof I hereunto set my hand and the seal of said supreme court of Utah Territory, at Salt Lake City, this 7th day of June, 1884.

[Seal Supreme Court, United States of America, Territory of Utah.]

E. T. SPRAGUE,
Clerk of Supreme Court.

Endorsed on cover: Utah Territory supreme court. No. 257. Elbridge Tufts, appellant, *vs.* Don C. Tufts, administrator of the estate of Elmira P. Tufts, deceased. Filed 18th June, 1884.

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123-76

Office Supreme Court U. S.
FILED.
SEP 12 1887
JAMES. H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. 257.

ELBRIDGE TUFTS, APPELLANT,

vs.

DON C. TUFTS, ADMINISTRATOR OF THE ESTATE OF ELMIRA P. TUFTS, DECEASED, RESPONDENT.

BRIEF FOR APPELLANT.

J. L. RAWLINS.
Atty. for Appellant.

BEN SHEEKS,
Of Counsel.

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vs.

DON C. TUFTS, ADMINISTRATOR OF THE ESTATE OF ELMIRA P. TUFTS, DECEASED, RESPONDENT.

BRIEF FOR APPELLANT.

The court below puts its judgment of affirmance upon the power of a court of equity to set aside a deed which was falsely read to the grantor, who was induced to execute it by false and fraudulent representations, and in actual ignorance of its contents.

Its conclusion is, that in such case, the validity of the deed may be impeached by oral evidence, and in review of all the evidence that the lower court could rightfully find upon all the issues for the complainant.

Its positions as to the rule in equity we do not, and as to the facts we may not, question here.

The objection here is, not that the findings of fact do not state a case for the intervention of equity, but that the material findings are not within the issues presented by the bill of complaint.

That the defendant was brought in to answer one state of facts as alleged in the bill, and decree was made against him upon findings of quite different facts.

The bill states that for five months prior to August 1, 1882, [date of filing bill] the defendant was trying to induce the plaintiff to agree to convey to him the property mentioned, he, at the same time, to agree to convey to her all of his real property in the city of Salt Lake, no title to pass until the death of one, when the survivor was to take title and possession; that on or about the 26th day of June, A. D. 1882, he showed her pa-

pers "containing substantially the same provisions as above described," and read to her an agreement which he had then drawn up, "the same embodying substantially the same premises as hereinbefore set forth in said other agreement;" and promised her that if she would execute this agreement, he would build at his own expense a brick house on his own land, and give her a life lease of the same; that defendant's talk was for the purpose of fraudulently procuring plaintiff's property without consideration; that relying upon defendant's false and fraudulent statements and *arguments*, the plaintiff executed the deed, believing it to be the agreement before read to her, and that defendant paid no consideration therefor. It appears from these allegations that prior to the execution of the deed, the parties had verbally agreed to each devise certain property to the other. The contract was virtually to dispose of their respective properties to each other by will. The alleged promise of defendant to build a house on his own land and give plaintiff a life lease thereof, was no part of the agreement which she alleges was already drawn up and read to her. From the allegations it may be inferred that she relied on this promise; but there is no statement in the bill that at any time she supposed the instrument she was signing was the life lease referred to.

It is true, she did not believe it to be a warranty deed of her property, but she states that she did believe it to be an agreement to convey the same upon her death.

The bill shows the complainant to have been advanced in years, but does not show that she was in any way incapacitated by reason of her age; nor that she was the mother of the defendant; nor any relation of special trust and confidence between the parties; nor that defendant had ever attended to her business, or lived with her after becoming of age. In fine, the case made by the bill, is one of *actual* fraud and mistake, which is stated with particularity and in detail.

The findings of the court are:

That plaintiff, at the time of the execution of the deed, believed it to be a *life lease* of property belonging to defendant, upon which she was agreeing to assist in building a house; that prior to that time, there had been negotiations between the parties to the effect, that plaintiff should assist defendant with money to build a house upon lands of his own, and

that she should have a life lease of the same, and that thereupon she directed him to prepare the papers; that he never attempted to build any such house as was contemplated by the agreement for the life lease; that defendant was a son of plaintiff, and she reposed great confidence and trust in him; that he had theretofore been attending to her business, and in former years had lived with her after he became of age.

Now, none of this matter, which alone supports the conclusion of law that the deed was procured by *fraud*, is found in the bill. Some of it is directly contradictory of plaintiff's allegations.

Instance, finding that she was agreeing to assist in building the proposed house, that she thought she was signing a life lease, and directed defendant to prepare the papers. Eliminate all of the foregoing alleged facts, and what remains to support the decree? Simply, that plaintiff, a woman seventy years of age, made and acknowledged a deed of her property to defendant without reading it, or being informed as to its contents, without consideration. A purely voluntary conveyance between parties, who for aught that appears, were dealing as strangers and at arm's length. These statements alone in a bill in equity would hardly give the chancellor jurisdiction.

But findings of relationship, and of special relations of trust and confidence are imported into the case, which with the want of consideration are to make a case of constructive fraud.

The defendant was arraigned upon specific charges of fraud, but was concluded by the court with findings of fraud not alleged. Unfortunately for the defendant he is deprived, by act of Congress, of the right to have this court review the evidence, given elsewhere to suitors in equity causes.

He must try his case here by a partial record. But some presumptions we think may be made. It is fair to assume that the case as made by the bill, of *fraud*, was not sustained.

The defendant has fully answered and overcome *that* case, for the court has *not* found as facts the matters alleged, but puts its decree on findings of other matter. We may assume that *evidence* of the facts found was before the court, but in the absence of amendment to the bill, the defendant could not suppose that such evidence would be made the foundation for substantive findings, and would naturally direct his evidence alone to meet the case made by the bill.

The decree cannot be sustained on the ground of mistake, as a substantive head of equity jurisdiction. It is not framed in that aspect nor will the findings support a decree on this ground. Eliminate, as hereinbefore stated, the findings not warranted by the bill, and we have the simple statement that plaintiff signed and solemnly acknowledged and delivered a deed of property without consideration and without reading it. If it be said that the bill shows that she believed the deed to have been an agreement, and the findings show that she believed it to have been a life lease, and that the substance of the matter was her *belief* that the instrument was not a deed, but something else, and therefore that this element of mistake must be added, still we say, nothing appears to account for her gross folly and negligence.

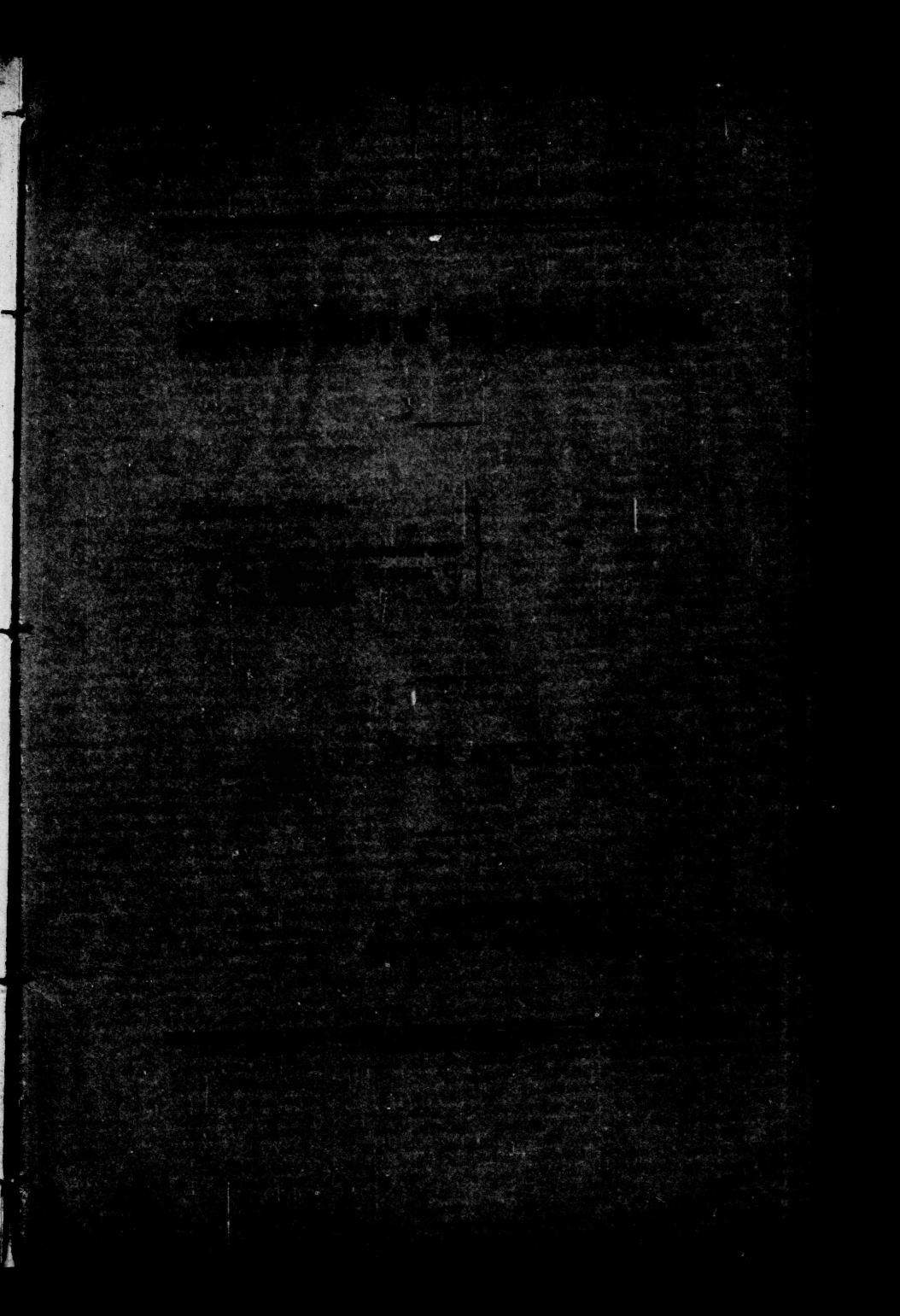
Kerr. Fraud and Mistake, 407.
Grymes vs. Sanders, 93 U. S. 61.
Glenn vs. Statler, 42 Iowa, 107.
Butman vs. Hussey, 30 Me. 263.
Juzan vs. Toulman, 9 Ala. 662.
Hill vs. Bush, 19 Ark. 522.

Her acknowledgment proves *prima facie* that her act was free and voluntary, and no cause for her belief that she was signing some instrument other than the deed is made to appear.

Respectfully submitted,

J. L. RAWLINS.
Atty. for Appellant.

BEN SHEEKS,
Of Counsel.



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J. L. RAWLINS.
Atty. for Appellant.

BEN SHEEKS,
Of Counsel.

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Supreme Court of the United States.

ELBRIDGE TUFTS,
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BRIEF FOR APPELLEE.

ARTHUR BROWN,
Attorney for Plaintiff and Appellee.

Star Print, Salt Lake.

IN THE SUPREME COURT OF THE UNITED STATES.

ELBRIDGE TUFTS,
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BRIEF FOR RESPONDENT.

The brief filed in behalf of the appellant in this case does not specify or allege any error as required by Rule 21, Paragraphs 1 and 2.

On reading the whole brief through carefully, we are left to guess that the error sought to be complained of, is a variance between the case as stated in the complaint, and the findings of fact by the court. No question is made that the findings of fact are sufficient to support the judgment, and no question is made that the complaint is sufficient to authorize the judgment.

If the complaint is carefully examined it will be found that there is no foundation whatsoever for the alleged variance. Although the complaint is some-

what obscurely drawn, and contains many statements which are clearly surplusage, yet the facts which are found in the fourth finding, (Record p. 8, folio 11) and which finding is alone sufficient to support the judgment, are stated distinctly in the complaint.

The complaint was filed by Elmira P. Tufts in her lifetime, her death not having taken place until after the hearing and decree in the court below. It is filed to obtain the cancellation of a deed from plaintiff to defendant, which it is alleged the defendant procured by fraud and false representations as to the character of the paper which was being signed by plaintiff, and without any consideration moving from the defendant to her. The representations consisted of promises to prepare various agreements, the effect of which would be to support plaintiff and take care of her during her life. The particular contract which plaintiff supposed she was executing, is stated in Folio 2nd:

*"Defendant promised the plaintiff, in the month of June, 1882, if she would execute an agreement which he had then, on or about said June 26th, 1882, drawn up and read to plaintiff, * * * * that the defendant would build the plaintiff, at his own expense, a nice brick house upon his, said defendant's, lot of land, situated immediately east of and adjoining on the eastern portion of the above described lot of land, which was owned by the plaintiff as aforesaid, and being a portion or part of said lot No. 5, in the northwest corner thereof, and give her a life lease of the same for and during her natural life,*

said brick building to be commenced by defendant as soon as said plaintiff would sign said written agreement then drawn up by defendant."

Again: "*Plaintiff alleges that, relying upon the statements and arguments of said defendant, she signed and executed what she supposed to be said agreement as had been theretofore, to-wit: June 26, 1882, drawn by defendant and read to her by said defendant, as embodying their said intentions, but which she has since learned was a warranty deed from said plaintiff to said defendant conveying said real estate to plaintiff hereinbefore described, from said plaintiff to said defendant, a copy of which deed is hereto annexed and made a part hereof, and marked 'Exhibit A.'*"

Again, Folio 4:

"*Plaintiff alleges she did not know of the contents of said warranty deed when she signed and executed the same.*"

Again in the next paragraph:

"*She believed at the time of executing said deed that she was signing the agreement hereinbefore recited, a more particular description of which the plaintiff is unable to give, never having had the same in her possession, and her statements thereof being given from memory.*"

Compare these allegations with the 4th finding, and we will see that they are the same so far as the representation is concerned. The material false representation upon which the deed was set aside is:

*"Plaintiff did not know that it was a deed of her property in question, but believed it to be a life lease of property belonging to defendant upon which she was agreeing to assist in building a house. That prior to the time of the execution of said deed there had been negotiations between the said plaintiff and the said defendant to the effect that the plaintiff should assist the defendant with money to build a house upon lands of his own, and that plaintiff should have a life lease of the same. * * * And that plaintiff signed the same under the belief that it was a paper relative to the life lease to her of the said land of the defendant upon which said building was to be erected."*

It was wholly immaterial whether the contract had been theretofore drawn and shown to her, or whether it had been simply talked about. The gist of the false representation was that he told her that the paper was the arrangement to build a house on his land in which she was to live, and which she was to assist him in building when in truth it was a warranty deed. That arrangement is stated in the complaint, it is stated in the findings. If that representation was made falsely, and the signature of a woman seventy years old procured by it to a deed, a court of equity will set it aside. The plaintiff so alleges, the court so finds.

The court would set aside such a deed if the plaintiff and defendant had been absolute strangers. It would be a sufficient fraud for a court to interfere in that case. It only becomes more criminal by the ad-

ditional fact that the plaintiff was the mother of the defendant. It was not necessary to allege it. The finding is surplusage.

It is a fundamental rule of equity that where one person has been misled into signing a different paper from that which such person supposed he or she was signing, and another person, so misleading him, has taken advantage of it, the former can either reform or set aside the instrument entirely. It is not necessary that the mistake be a mistake of both parties. A mistake of one party, of which the other knows and takes advantage, is a mistake and a fraud also.

The complaint states a clear case entitling the plaintiff to the relief of this court, in the form of a rescision. I refer to the following authorities:

Welles vs. Yates, 44 N. Y. 525.
Hearst vs. Pujol, 44 Cal., 230.
Eaton vs. Eaton, 37 N. J. L. 108.
Case vs. Case, 26 Mich., 484.

ARTHUR BROWN,
Attorney for Plaintiff and Appellee.